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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 ALAN SHINDERMAN,

11 Plaintiff,

12 v.

13 KEITH POLLINS, *et al.*,

14 Defendants.

Case No. 2:12-CV-00507-KJD-PAL

15
16 **ORDER**

17 Before the Court is Defendants Patricia Cleary and Patricia L. Cleary Law Office's ("Cleary
18 Defendants") Motion for Summary Judgment (#37). Plaintiff Alan Shinderman ("Plaintiff")
19 responded (#39) and Defendants replied (#44).

20 **I. Background**

21 Keith Pollins ("Pollins") wanted to decrease or eliminate his spousal support payments to
22 Jacqueline Stockwell ("Stockwell"), his former spouse. Cleary Defendants represented Pollins in this
23 pursuit. It is undisputed that Cleary Defendants informed Pollins that a rebuttable presumption exists
24 in California (the relevant jurisdiction) that cohabitation of a former spouse reduces the supported
25 spouse's need for support (#44; 7:24-28). It is further undisputed that the Cleary Defendants
26 encouraged Pollins to retain a private investigator to assist in obtaining Pollin's objective (#39, Ex.
8, #44; 4). At the time, Stockwell was apparently in a romantic relationship with Plaintiff.

1 Subsequently, Cleary Defendants submitted filings to the California State Courts seeking a reduction
 2 or elimination of Pollins' spousal support payments. Included with these filings was Plaintiff's credit
 3 report (#44; 13).

4 Both Pollins and Cleary deny "obtaining" the credit report. However, the report was filed
 5 along with other documents by Cleary Defendants, seeking a reduction in Pollins' spousal support
 6 obligation. Cleary Defendants here seek summary judgment in their favor.

7 II. Summary Judgment Standard

8 Summary judgment may be granted if the pleadings, depositions, answers to interrogatories,
 9 and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any
 10 material fact and that the moving party is entitled to a judgment as a matter of law. See Fed. R. Civ.
 11 P. 56(c); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The moving party bears the
 12 initial burden of showing the absence of a genuine issue of material fact. See *Celotex*, 477 U.S. at
 13 323. The burden then shifts to the nonmoving party to set forth specific facts demonstrating a
 14 genuine factual issue for trial. See *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,
 15 587 (1986); Fed. R. Civ. P. 56(e).

16 All justifiable inferences must be viewed in the light most favorable to the nonmoving party.
 17 See *Matsushita*, 475 U.S. at 587. However, the nonmoving party may not rest upon the mere
 18 allegations or denials of his or her pleadings, but he or she must produce specific facts, by affidavit
 19 or other evidentiary materials provided by Rule 56(e), showing there is a genuine issue for trial. See
 20 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). The court need only resolve factual
 21 issues of controversy in favor of the non-moving party where the facts specifically averred by that
 22 party contradict facts specifically averred by the movant. See *Lujan v. Nat'l Wildlife Fed'n.*, 497
 23 U.S. 871, 888 (1990); see also *Anheuser-Busch, Inc. v. Natural Beverage Distribrs.*, 69 F.3d 337, 345
 24 (9th Cir. 1995) (stating that conclusory or speculative testimony is insufficient to raise a genuine
 25 issue of fact to defeat summary judgment). "[U]ncorroborated and self-serving testimony," without
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1 more, will not create a “genuine issue” of material fact precluding summary judgment. Villiarimo v.
 2 Aloha Island Air, Inc., 281 F.3d 1054, 1061 (9th Cir. 2002).

3 Summary judgment shall be entered “against a party who fails to make a showing sufficient
 4 to establish the existence of an element essential to that party’s case, and on which that party will
 5 bear the burden of proof at trial.” Celotex, 477 U.S. at 322. Summary judgment shall not be granted
 6 if a reasonable jury could return a verdict for the nonmoving party. See Anderson, 477 U.S. at 248.
 7 However, [i]f the evidence is merely colorable, or is not significantly probative, summary judgment
 8 may be granted.” Id. (internal citations omitted).

9 III. Analysis

10 At the outset, the Court notes the parties’ unfortunate penchant for wandering far afield from
 11 the relevant matters before the Court. This is not only ineffective, but wastes the resources of the
 12 Court. The parties are strongly encouraged to reform their practice and provide the Court only cogent
 13 and relevant argument. For example, both parties engage at length the issue of “separately filed”
 14 statements of undisputed fact, citing the Bankruptcy Court Local Rule 7056. To clear up any
 15 confusion, this is not a bankruptcy case, and the parties are not proceeding in bankruptcy court.
 16 Further, no analogous rule exists in this Federal District Court. While such deficiencies are
 17 ubiquitous throughout the parties’ pleadings, the Court turns now to the merits of the present motion.

18 The FCRA regulates the receipt and use of “consumer reports” which are any communication
 19 from a consumer reporting agency bearing on the credit–fiscal, moral, or otherwise—of a consumer
 20 which is collected or expected to be used for the unsurprising purposes delineated in the statute. See
 21 15 U.S.C. § 1681a(d). There is no dispute that this is precisely the information obtained about
 22 Plaintiff.

23 The FCRA prohibits the use or obtaining of a consumer report for any purpose not expressly
 24 authorized. Id. at §1681b(f). There is no dispute that the report was obtained and used for an
 25 unauthorized purpose. Defendants’ reading of the Court’s prior Order (#19) to preclude liability for
 26 “use” of the report is clearly incorrect. The Court held that the FCRA claim was preserved, which

1 includes both “use” of and “obtaining” the report, while dismissing the non-FCRA claims based on
2 Defendants’ use under the California litigation privilege. To the extent that the language of the Order
3 is susceptible to misinterpretation, reference to the headings under which the language is found is a
4 quick and clear remedy. Further, even if the Court intended to foreclose liability for “use,” the Court
5 lacks the authority to simply ignore statute. At bottom, while there may be some dispute as to which
6 Defendant obtained the report, Cleary Defendants concede that they “used” the report in their filings
7 seeking a reduction or elimination of spousal support payments on Pollins’ behalf (#44; 13).
8 Accordingly, it appears that Clearly Defendants are in violation of the FCRA.

9 Once a report is obtained or used for an unauthorized purpose, the FCRA provides for
10 liability based on either willful or negligent violation. Willful violation permits various remedies
11 including actual damages, punitive damages, and costs and fees. Id. at §1681n(a). Negligent violation
12 allows for actual damages and costs and fees. Id. at §1681o(a). Mental state is a question of fact
13 which is left unanswered by the record before the Court and is almost certainly best reserved for the
14 jury.

15 IV. Conclusion

16 In accordance with the above analysis, Clearly Defendants have not met their burden of
17 showing that there is no genuine dispute of material fact. Accordingly, Cleary Defendants’ Motion
18 for Summary Judgment (#37) is **HEREBY DENIED**.

19 DATED this 11th day of October 2013.



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Kent J. Dawson
United States District Judge